

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Commission,)	Application No. 911-26/
on its own motion, seeking to)	PI-122
determine Enhanced Landline 911)	
surcharge payment requirements)	
for interconnected Voice Over)	
the Internet Protocol Providers)	

COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC

Level 3 Communications, LLC (“Level 3”) hereby submits the following comments in Application No. 911-26/PI-122 in response to the Nebraska Public Service Commission’s (“Commission”) Order Opening Docket, Seeking Comments and Scheduling Hearing on the application of E-911 surcharges for interconnected voice over Internet Protocol (“VoIP”) services, entered September 26, 2006 (the “Commission Order”).

Level 3 is principally a wholesale provider of communications services to bandwidth intensive customers and Internet Protocol (“IP”) based resellers. Among the services that Level 3 provides are wholesale VoIP services that its enhanced service provider (“ESP”) customers use either in part, or in whole, to offer retail VoIP services to end users. Some of Level 3’s wholesale VoIP services also include E911 support. In fact, Level 3 established E911 connectivity to support its interconnected VoIP provider customers well in advance of the FCC Order (as defined in the Commission Order). Because of the well-established importance of the 911 system, Level 3 is committed to E911, including requirements to assess, collect and remit surcharges necessary to support the cost of operating the 911 network.

The Nebraska Emergency Telephone Communications Systems Act (“the Act”) arguably does not include interconnected VoIP services as it is currently written. Rather, the language used in the Act appears to contemplate a more traditional understanding of “local exchange access line” according to historical regulatory classifications of telecommunications services. Therefore, if the intent of the Commission and the Nebraska legislature is to capture interconnected VoIP services for the purpose of helping to fund the E911 network, Level 3 submits that a modification of the Act would be necessary..

Should an effort be made to revise the Act in such a way to explicitly require interconnected VoIP providers to pay applicable surcharges, it should be sure to avoid imposing payment obligations on both underlying wholesale providers as well as the retail providers of VoIP services. As a wholesale provider of VoIP service components committed to providing appropriate financial support to the 911 network, Level 3 faces many challenges. Among the challenges it faces is ensuring that it meets its own commitment to pay applicable surcharges while avoiding the double payment of surcharges on the same line by its customers. Level 3 has established a large interconnected 911 infrastructure to support its ESP customers’ 911 needs. Typically, when Level 3 establishes its 911 interconnection it is required to commit to paying established landline 911 surcharges since it is a certificated telecommunications provider. Very often the surcharge regime does not contemplate whether the carrier is a wholesale provider and treats all carriers as if they were providing service directly to the retail end-users. Reconciling the legacy 911 funding regimes with new laws that seek to include developing technologies can be difficult for the wholesale carriers supporting VoIP and

for their VoIP provider customers as well as the 911 authority seeking to ensure it is being adequately funded. While Level 3 is remitting applicable surcharges as a wholesale provider, and therefore does not believe there is a significant funding gap to be concerned about presently, unless legislators reconcile the historical funding regime for telecommunications carriers with new legislation intended to capture interconnected VoIP providers, there will almost inevitably be conflict or confusion between the two. Further, if the Commission or the legislature determine it is appropriate to amend the Act, it is important that the new law explicitly allow providers to enter into commercial arrangements where underlying network, wholesale, or third party providers may remit on behalf of retail provider customers.

Level 3's support for expanding the E911 surcharge to include interconnected VoIP services is not an acknowledgement of broader state level jurisdiction to regulate VoIP services; however, Level 3 does believe that it is important to develop rules to ensure that adequate funding of the 911 system remains in place. If new laws do not explicitly address interconnected VoIP services, or do not adequately account for wholesale business models, or impose an overly complex payment structure, the likelihood increases that 911 funding will fall short. Level 3 submits that if the Commission determines that it is appropriate to extend 911 surcharges to interconnected VoIP providers, the law that requires such should very clearly define which party in the service chain is obligated to make payment. The new law should account for the wholesale provider model and recognize that carriers, like Level 3, that are providing service components to VoIP providers may already be paying traditional landline 911 charges and therefore explicitly allow for commercial agreements whereby underlying

network, wholesale, or third party providers can remit on behalf of retail provider customers.

Respectfully submitted this 13th day of November, 2006.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of November, 2006, an original, five copies and an electronic copy of the Comments of Level 3 Communications, LLC in Application No. 911-026 were served upon:

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